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8 **BACKWEB TECHNOLOGIES, LTD.**
9

10 UNITED STATES DISTRICT COURT
11 FOR THE NORTHERN DISTRICT OF CALIFORNIA
12 OAKLAND DIVISION

13 BACKWEB TECHNOLOGIES, LTD.,

14 Plaintiff,

15 v.

16 MICROSOFT CORPORATION;
17 IANYWHERE SOLUTIONS, INC.; and
SYBASE, INC.
18

19 Defendants.
20
21
22

Case No. CV 09-1224 CW

**STIPULATED MOTION FOR LEAVE
TO FILE SECOND AMENDED
COMPLAINT AND ORDER**

23 Pursuant to Rule 15 of the Federal Rules of Civil Procedure and Civil Local Rule 7-
24 12, plaintiff BackWeb Technologies, Ltd. ("BackWeb") and defendants Microsoft
25 Corporation ("Microsoft"); iAnywhere Solutions, Inc. ("iAnywhere"); and Sybase, Inc.
26 ("Sybase"), through their respective attorneys of record, hereby stipulate as follows:
27
28

1 1. WHEREAS, Plaintiff seeks to amend its complaint, solely by adding
2 Symantec Corporation (“Symantec”) as a new party defendant;

3 2. WHEREAS the Original Complaint in this action was filed on March 20,
4 2009, and Plaintiff filed its First Amended Complaint as of right on April 15, 2009, adding
5 Sybase and iAnywhere as defendants;

6 3. WHEREAS, The Second Amended Complaint alleges that Symantec infringes
7 the same patents that it alleges Microsoft, Sybase and iAnywhere infringe;
8

9 4. WHEREAS, because Symantec is alleged to have infringed the same patents,
10 it is likely that the same or similar issues will arise on claims construction and on the
11 defenses of invalidity and unenforceability for Symantec and the present defendants;

12 5. WHEREAS Symantec, like the present defendants, is alleged to have
13 infringed by, *inter alia*, making, using and selling products that transmit digital information
14 in background mode over a communications link between a computer network and a local
15 computer and throttling the transfer speed to create minimal interference with other processes
16 communicating over the communications link, so that it is likely that similar issues of
17 infringement will arise for Symantec; and
18

19 6. WHEREAS the present parties to this case are also today filing a stipulation
20 that the Initial Case Management Conference, now scheduled for August 4, 2009, be
21 rescheduled to September 8, 2009, subject to the Court’s schedule and availability, in order
22 to allow time for Plaintiff to seek amendment of its complaint, and to allow Symantec time to
23 obtain litigation counsel and prepare for the Case Management Conference.
24

25 NOW THEREFORE the parties through their undersigned counsel hereby stipulate
26 and request that the Court grant leave to plaintiff to file its Second Amended Complaint, a
27 copy of which is attached hereto as Exhibit 1.
28

1 **IT IS SO STIPULATED**

2
3 Dated: July 9, 2009

Respectfully submitted,

4
5 /s/ George F. Bishop

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Sybase, Inc. and iAnywhere Solutions, Inc.*

CERTIFICATION PURSUANT TO GENERAL ORDER 45

Pursuant to General Order 45X.B, I, George F. Bishop, attest that the above
signatories for the Defendants have concurred and consented to the filing of this document.

DATED: July 9, 2009

/s/George F. Bishop
George F. Bishop

PURSUANT TO STIPULATION IT IS ORDERED THAT

Plaintiff's Stipulated Motion for Leave to File Second Amended Complaint is GRANTED; and Plaintiff has leave to file the Second Amended Complaint attached to the Stipulated Motion for Leave to File Second Amended Complaint.

7/21/09

Dated: _____



Honorable Claudia Wilken
U.S. DISTRICT COURT JUDGE